

TEACHERS' TENURE

Act 4 of 1937 (Ex. Sess.)

AN ACT relative to continuing tenure of office of certificated teachers in public educational institutions; to provide for probationary periods; to regulate discharges or demotions; to provide for resignations and leaves of absence; to create a state tenure commission and to prescribe the powers and duties thereof; and to prescribe penalties for violation of the provisions of this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—Am. 1964, Act 2, Eff. Aug. 28, 1964.

Popular name: Teachers' Tenure Act

The People of the State of Michigan enact:

ARTICLE I

DEFINITIONS.

38.71 “Teacher” defined.

Sec. 1. (1) The term “teacher” as used in this act means a certificated individual employed for a full school year by any board of education or controlling board.

(2) An individual who is not certificated but is employed for a full school year pursuant to section 1233b of the revised school code, Act No. 451 of the Public Acts of 1976, being section 380.1233b of the Michigan Compiled Laws, or is employed pursuant to an annual vocational authorization or a temporary approval, as defined in state board rule, is considered to be a teacher for the purpose of serving the probationary period under article II, but such an individual is not considered a teacher for the purpose of continuing tenure under article III until he or she becomes certificated.

(3) An individual employed as a teacher in a public school academy established under Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, is not considered a teacher during that employment for the purpose of continuing tenure under article III. However, an individual described in section 1(4) of article III is a teacher for the purpose of retaining continuing tenure as described in that section.

(4) Teacher does not include an individual whose teaching certificate has expired or has been suspended or revoked.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.71;—Am. 1967, Act 216, Imd. Eff. July 10, 1967;—Am. 1993, Act 59, Imd. Eff. June 11, 1993;—Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993;—Am. 1996, Act 282, Imd. Eff. June 17, 1996.

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38.72 “Certificated” defined.

Sec. 2. The term “certificated” means holding a valid teaching certificate, as defined by the state board of education. For the purpose of this section, an individual is considered to be holding a valid teaching certificate if the individual has on file with his or her employing school district either an appropriate teaching certificate issued by the state board of education or, if the individual's application for a teaching certificate has not been confirmed or rejected by the state board, written evidence from the individual's teacher education college that he or she meets the requirements described in section 1535 of the school code of 1976, Act No. 451 of the Public Acts of 1976, being section 380.1535 of the Michigan Compiled Laws.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.72;—Am. 1967, Act 216, Imd. Eff. July 10, 1967;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

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Administrative rules: R 390.661 of the Michigan Administrative Code.

38.73 “Controlling board” defined.

Sec. 3. As used in this act, “controlling board” means all boards having the care, management, or control over public school districts and public educational institutions other than a public school academy established under the revised school code, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.73;—Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993;—Am. 1996, Act 282, Imd. Eff. June 17, 1996.

Popular name: Teachers' Tenure Act

38.74 “Demote” defined.

Sec. 4. The word “demote” means to reduce compensation for a particular school year by more than an amount equivalent to 3 days' compensation or to transfer to a position carrying a lower salary.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.74;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

38.75 School year; definition.

Sec. 5. The “school year” shall be defined as the legal school year at the time and place where service was rendered.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.75.

Popular name: Teachers' Tenure Act

ARTICLE II PROBATIONARY PERIOD.

38.81 Teachers' probationary period; continuing tenure.

Sec. 1. (1) Subject to subsections (2) and (3), a teacher is in a probationary period during his or her first 4 full school years of employment.

(2) A teacher under contract but not on continuing tenure as of the effective date of the amendatory act that added this subsection is in a probationary period during his or her first 2 full school years of employment.

(3) A teacher on continuing tenure as of the effective date of the amendatory act that added this subsection continues to be on continuing tenure even if the teacher has not served for at least 4 full school years of employment.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.81;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

Transfer of powers: See § 16.406.

Popular name: Teachers' Tenure Act

38.82 Probationary period; granting third year of probation.

Sec. 2. A teacher shall not be required to serve more than 1 probationary period in any 1 school district or institution. However, upon notice to the tenure commission, the controlling board may grant a third year of probation to a teacher described in section 1(2) of this article.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.82;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

Popular name: Teachers' Tenure Act

38.83 Controlling board; statements of performance and notices of dismissal, issuance to probationary teachers.

Sec. 3. At least 60 days before the close of each school year the controlling board shall provide the probationary teacher with a definite written statement as to whether or not his work has been satisfactory. Failure to submit a written statement shall be considered as conclusive evidence that the teacher's work is satisfactory. Any probationary teacher or teacher not on continuing contract shall be employed for the ensuing year unless notified in writing at least 60 days before the close of the school year that his services will be discontinued.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.83;—Am. 1967, Act 216, Imd. Eff. July 10, 1967.

Popular name: Teachers' Tenure Act

38.83a Teacher in probationary period; individualized development plan; performance evaluation; failure to comply with subsection (1) as evidence of satisfactory performance.

Sec. 3a. (1) If a probationary teacher is employed by a school district for at least 1 full school year, the controlling board of the probationary teacher's employing school district shall ensure that the teacher is provided with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher and that the teacher is provided with at least an annual year-end performance evaluation each year during the teacher's probationary period. The annual year-end performance evaluation shall be based on, but is not limited to, at least 2 classroom observations held at least 60 days apart, unless a shorter interval between the 2 classroom observations is mutually agreed upon by the teacher and the administration, and shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. This subsection does not prevent a collective bargaining agreement between the controlling board and the teacher's bargaining representative under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws, from providing for more

performance evaluations or classroom observations in addition to those required under this subsection. Except as specifically stated in this subsection, this section does not require a particular method for conducting a performance evaluation or classroom observation or for providing an individualized development plan.

(2) Failure of a school district to comply with subsection (1) with respect to an individual teacher in a particular school year is conclusive evidence that the teacher's performance for that school year was satisfactory.

History: Add. 1993, Act 59, Imd. Eff. June 11, 1993.

Popular name: Teachers' Tenure Act

38.84 Probationary period; portions of act inapplicable.

Sec. 4. Articles 4, 5 and 6 shall not apply to any teacher deemed to be in a period of probation.

History: Add. 1963, Act 242, Eff. Sept. 6, 1963.

Popular name: Teachers' Tenure Act

ARTICLE III CONTINUING TENURE.

38.91 Teacher on continuing tenure; program operated by consortium of districts; teacher employed in public school academy; adult education; contracts of employment in other than classroom; salary; extra duty for extra pay.

Sec. 1. (1) After the satisfactory completion of the probationary period, a teacher shall be employed continuously by the controlling board under which the probationary period has been completed, and shall not be dismissed or demoted except as specified in this act.

(2) If a teacher employed in a program operated by a consortium of school districts was previously on continuing tenure in a school district that participates in the consortium, the teacher shall be considered to be on continuing tenure only in that school district.

(3) If a teacher employed in a program operated by a consortium of school districts was not previously on continuing tenure in a school district that participates in the consortium and satisfactorily completes the probationary period, the teacher shall be considered to be on continuing tenure only in the school district that is the fiscal agent for the consortium. However, if there is a written agreement between the teacher and another participating school district that provides that the teacher will have continuing tenure in that school district, the teacher shall be considered to be on continuing tenure only in that school district and shall not be considered to be on continuing tenure in the school district that is the fiscal agent for the consortium.

(4) If a teacher employed in a public school academy established under the revised school code, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws, is on leave of absence from a school district and was on continuing tenure in the school district at the time he or she began the leave of absence, the teacher retains continuing tenure in that school district during the period he or she is employed in the public school academy.

(5) If a teacher satisfactorily completes the probationary period as an adult education teacher, the teacher shall be considered to be on continuing tenure in the school district only for adult education and shall not by virtue of completing the probationary period as an adult education teacher be considered to be on continuing tenure in the school district for elementary and secondary education.

(6) If a teacher satisfactorily completes the probationary period as an elementary or secondary education teacher, the teacher shall be considered to be on continuing tenure in the school district only for elementary and secondary education and shall not by virtue of completing the probationary period as an elementary or secondary education teacher be considered to be on continuing tenure in the school district for adult education.

(7) If the controlling board provides in a contract of employment of a teacher employed other than as a classroom teacher, including but not limited to, a superintendent, assistant superintendent, principal, department head or director of curriculum, made with the teacher after the completion of the probationary period, that the teacher shall not be considered to be granted continuing tenure in that other capacity by virtue of the contract of employment, then the teacher shall not be granted tenure in that other capacity, but shall be considered to have been granted continuing tenure as an active classroom teacher in the school district. Upon the termination of such a contract of employment, if the controlling board does not reemploy the teacher under contract in the capacity covered by the contract, the teacher shall be continuously employed by the controlling board as an active classroom teacher. Failure of a controlling board to reemploy a teacher in any such capacity upon the termination of any such contract of employment described in this subsection shall not be considered to be a demotion under this act. The salary in the position to which the teacher is assigned shall

be the same as if the teacher had been continuously employed in the newly assigned position. Failure of a controlling board to so provide in any such contract of employment of a teacher in a capacity other than a classroom teacher shall be considered to constitute the employment of the teacher on continuing contract in the other capacity and subject to this act.

(8) Continuing tenure does not apply to an annual assignment of extra duty for extra pay.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—Am. 1941, Act 119, Imd. Eff. May 23, 1941;—CL 1948, 35.91;—Am. 1963, Act 242, Eff. Sept. 6, 1963;—Am. 1993, Act 59, Imd. Eff. June 11, 1993;—Am. 1993, Act 337, Imd. Eff. Dec. 31, 1993;—Am. 1996, Act 282, Imd. Eff. June 17, 1996.

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38.92 Teacher on continuing tenure; employment by another controlling board.

Sec. 2. If a teacher on continuing tenure is employed by another controlling board, the teacher is not subject to another probationary period of more than 2 years beginning with the date of employment, and may at the option of the controlling board be placed immediately on continuing tenure. A notice provided under section 3 of article 2 shall be given not later than 60 days before the completion of the probationary period. If a teacher on continuing tenure becomes an employee of another controlling board as a result of school district annexation, consolidation or other form of school district reorganization, the teacher shall be placed on continuing tenure within 30 days unless the controlling board, by a 2/3 vote on an individual basis, places the teacher on not more than 2 years' probation. However, if such a teacher is under contract but not on continuing tenure with the employing board as of the effective date of the amendatory act that added this sentence, the teacher is not subject to another probationary period of more than 1 year beginning with the date of employment.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.92;—Am. 1967, Act 216, Imd. Eff. July 10, 1967;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

Popular name: Teachers' Tenure Act

38.93 Teacher on continuing tenure; individualized development plan; performance evaluation; failure to comply with subsection (1) as evidence of satisfactory performance.

Sec. 3. (1) The controlling board of the school district employing a teacher on continuing tenure shall ensure that the teacher is provided with a performance evaluation at least once every 3 years and, if the teacher has received a less than satisfactory performance evaluation, the school district shall provide the teacher with an individualized development plan developed by appropriate administrative personnel in consultation with the individual teacher. The performance evaluation shall be based on, but is not limited to, at least 2 classroom observations conducted during the period covered by the evaluation and, if the teacher has an individualized development plan, shall include at least an assessment of the teacher's progress in meeting the goals of his or her individualized development plan. This section does not prevent a collective bargaining agreement between the controlling board and the teacher's bargaining representative under Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws, from providing for more performance evaluations or classroom observations in addition to those required under this section. Except as specifically stated in this subsection, this section does not require a particular method for conducting a performance evaluation or classroom observation or for providing an individualized development plan.

(2) Failure of a school district to comply with subsection (1) with respect to an individual teacher in a particular 3-year period is conclusive evidence that the teacher's performance for that period was satisfactory.

History: Add. 1993, Act 59, Imd. Eff. June 11, 1993.

Popular name: Teachers' Tenure Act

ARTICLE IV DISCHARGE, DEMOTION OR RETIREMENT.

38.101 Teacher on continuing tenure; discharge, demotion or retirement; continuation of contracts of teachers over retirement age.

Sec. 1. Discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause and only as provided in this act. This act does not prevent any controlling board from establishing a reasonable policy for retirement to apply equally to all teachers who are eligible for retirement under the public school employees retirement act of 1979, Act No. 300 of the Public Acts of 1980, being sections 38.1301 to 38.1408 of the Michigan Compiled Laws, or, having established a reasonable retirement age policy, from temporarily continuing on a year-to-year basis on criteria equally applied to all teachers the

contract of any teacher whom the controlling board might wish to retain beyond the established retirement age for the benefit of the school system.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—Am. 1941, Act 119, Imd. Eff. May 23, 1941;—CL 1948, 38.101;—Am. 1966, Act 15, Imd. Eff. Apr. 6, 1966;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Compiler's note: Act 136 of 1945, referred to in this section, was repealed by Act 300 of 1980 .

Popular name: Teachers' Tenure Act

38.102 Charges against teacher; filing with controlling board; decision to proceed upon charges; written statement of charges and teacher's rights.

Sec. 2. All charges against a teacher shall be made in writing, signed by the person making the charges, and filed with the secretary, clerk, or other designated officer of the controlling board, and a copy of the charges shall be provided to the teacher. The charges shall specify a proposed outcome of either discharge or a specific demotion of the teacher. The controlling board shall decide whether or not to proceed upon the charges, or may modify the charges and decide to proceed upon the charges as modified, not later than 10 days after the charges are filed with the controlling board. A decision to proceed upon the charges shall not be made except by a majority vote of the controlling board and shall be reduced to writing. The controlling board, if it decides to proceed upon the charges, shall furnish the teacher not later than 5 days after deciding to proceed upon the charges with the written decision to proceed upon the charges, a written statement of the charges and a statement of the teacher's rights under this article.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.102;—Am. 1967, Act 216, Imd. Eff. July 10, 1967;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

38.103 Suspension of teacher pending certain conditions; compensation.

Sec. 3. (1) On the filing of charges in accordance with this article, the controlling board may suspend the accused teacher from active performance of duty until 1 of the following occurs:

(a) The teacher fails to contest the decision to proceed upon the charges within the time period specified in section 4(1) of this article.

(b) A preliminary decision and order discharging or demoting the teacher is issued by the administrative law judge under section 4(5)(i) of this article.

(c) If the preliminary decision and order is to reinstate the teacher, a final decision and order is rendered by the tenure commission under section 4(5)(m) of this article.

(2) If a teacher is suspended as described in subsection (1), the teacher's salary shall continue during the suspension. However, if the teacher is convicted of a felony, the controlling board may discontinue the teacher's salary effective upon the date of the conviction.

(3) If a preliminary decision and order discharging a teacher is issued by the administrative law judge and the tenure commission subsequently reverses the preliminary decision and order of the administrative law judge, the tenure commission may order back pay.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.103;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

38.104 Decision to proceed upon charges; appeal with tenure commission; filing; notice; conduct of hearing; dismissal of appeal or denial of discharge or demotion; appeal to court of appeals.

Sec. 4. (1) A teacher on continuing tenure may contest the controlling board's decision to proceed upon the charges against the teacher by filing a claim of appeal with the tenure commission and serving a copy of the claim of appeal on the controlling board not later than 20 days after receipt of the controlling board's decision. The controlling board shall file its answer with the tenure commission and serve a copy of the answer on the teacher not later than 10 days after service of the claim of appeal. If the teacher does not contest the controlling board's decision in the time and manner specified in this subsection, the discharge or demotion specified in the charges takes effect and the teacher shall be considered to have waived any right to contest the discharge or demotion under this act.

(2) An administrative law judge described in subsection (3) shall furnish to each party without undue delay a notice of hearing fixing the date and place of the hearing. The hearing date shall not be less than 10 days after the date the notice of hearing is furnished and shall not be more than 60 days after service of the controlling board's answer unless the tenure commission grants a delay for good cause shown by the teacher or controlling board.

(3) The hearing shall be conducted by an administrative law judge who is an attorney licensed to practice law in this state and is employed by the department of education. An administrative law judge who conducts hearings under this section shall not advise the tenure commission or otherwise participate in a tenure commission review of an administrative law judge's preliminary decision and order under this section.

(4) Except as otherwise provided in this section, the hearing shall be conducted in accordance with chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to 24.287 of the Michigan Compiled Laws, and in accordance with rules promulgated by the tenure commission.

(5) The hearing and tenure commission review shall be conducted in accordance with the following:

(a) The hearing shall be public or private at the option of the teacher.

(b) The hearing shall be held at a convenient place in the county in which all or a portion of the school district is located or, if mutually agreed by the parties, at the tenure commission offices in Lansing. The administrative law judge's necessary travel expenses associated with conducting the hearing outside Lansing shall be borne equally by the tenure commission and the controlling board.

(c) Both the teacher and the controlling board may be represented by legal counsel.

(d) Testimony at the hearing shall be on oath or affirmation.

(e) A stenographer shall make a full record of the proceedings of the hearing. The cost of employing the stenographer and of providing the record shall be borne equally by the tenure commission and the controlling board.

(f) The administrative law judge may subpoena witnesses and documentary evidence on his or her own motion, and shall do so at the request of the controlling board or the teacher. If a person refuses to appear and testify in answer to a subpoena issued by the administrative law judge, the party on whose behalf the subpoena was issued may file a petition in the circuit court for the county in which the hearing is held for an order requiring compliance. Failure to obey such an order of the court may be punished by the court as contempt.

(g) The hearing shall be concluded not later than 90 days after the teacher's claim of appeal was filed with the tenure commission.

(h) The administrative law judge shall make the necessary orders to ensure that the case is submitted for decision not later than 50 days after the hearing is concluded.

(i) Not later than 60 days after submission of the case for decision, the administrative law judge shall serve a preliminary decision and order in writing upon each party or the party's attorney and the tenure commission. The preliminary decision and order shall grant, deny, or modify the discharge or demotion specified in the charges.

(j) Not later than 20 days after service of the preliminary decision and order, a party may file with the tenure commission a statement of exceptions to the preliminary decision and order or to any part of the record or proceedings, including, but not limited to, rulings on motions or objections, along with a written brief in support of the exceptions. The party shall serve a copy of the statement of exceptions and brief upon each of the other parties within the time limit for filing the exceptions and brief. If there are no exceptions timely filed, the preliminary decision and order becomes the tenure commission's final decision and order.

(k) Not later than 10 days after being served with the other party's exceptions and brief, a party may file a statement of cross-exceptions responding to the other party's exceptions or a statement in support of the preliminary decision and order with the tenure commission, along with a written brief in support of the cross-exceptions or of the preliminary decision and order. The party shall serve a copy of the statement of cross-exceptions or of the statement in support of the preliminary decision and order and a copy of the brief on each of the other parties.

(l) A matter that is not included in a statement of exceptions filed under subdivision (j) or in a statement of cross-exceptions filed under subdivision (k) is considered waived and cannot be heard before the tenure commission or on appeal to the court of appeals.

(m) If exceptions are filed, the tenure commission, after review of the record and the exceptions, may adopt, modify, or reverse the preliminary decision and order. The tenure commission shall not hear any additional evidence and its review shall be limited to consideration of the issues raised in the exceptions based solely on the evidence contained in the record from the hearing. The tenure commission shall issue its final decision and order not later than 60 days after the exceptions are filed.

(6) After giving the party notice and an opportunity to comply, the administrative law judge or the tenure commission may dismiss an appeal or deny a discharge or demotion for a party's lack of progress or for a party's repeated failure to comply with the procedures specified in this section or the tenure commission's rules.

(7) A party aggrieved by a final decision and order of the tenure commission may appeal the decision and order to the court of appeals in accordance with the Michigan court rules within 20 days after the date of the decision and order.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.104;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

38.104a Definitions; hearing where witness testifies as alleged victim of sexual, physical, or psychological abuse; use of dolls or mannequins; support person; notice; ruling on objection; exclusion of persons not necessary to proceeding; section additional to other protections or procedures.

Sec. 4a. (1) As used in this section:

(a) "Developmental disability" means that term as defined in section 100a of the mental health code, 1974 PA 258, MCL 330.1100a except that, for the purposes of implementing this section, developmental disability includes only a condition that is attributable to a mental impairment or to a combination of mental and physical impairments, and does not include a condition attributable to a physical impairment unaccompanied by a mental impairment.

(b) "Witness" means an alleged victim under subsection (2) who is either of the following:

(i) A person under 16 years of age.

(ii) A person 16 years of age or older with a developmental disability.

(2) This section only applies to a hearing held under this article in which a witness testifies as an alleged victim of sexual, physical, or psychological abuse. As used in this subsection, "psychological abuse" means an injury to the witness's mental condition or welfare that is not necessarily permanent but results in substantial and protracted, visibly demonstrable manifestations of mental distress.

(3) If pertinent, the witness shall be permitted the use of dolls or mannequins, including, but not limited to, anatomically correct dolls or mannequins, to assist the witness in testifying on direct and cross-examination.

(4) A witness who is called upon to testify shall be permitted to have a support person sit with, accompany, or be in close proximity to the witness during his or her testimony. A notice of intent to use a support person shall name the support person, identify the relationship the support person has with the witness, and give notice to all parties to the proceeding that the witness may request that the named support person sit with the witness when the witness is called upon to testify during any stage of the proceeding. The notice of intent to use a named support person shall be served upon all parties to the proceeding. The controlling board shall rule on any objection to the use of a named support person prior to the date at which the witness desires to use the support person.

(5) In a hearing under this section, all persons not necessary to the proceeding shall be excluded during the witness's testimony.

(6) This section is in addition to other protections or procedures afforded to a witness by law or court rule.

History: Add. 1987, Act 47, Eff. Jan. 1, 1988;—Am. 1998, Act 326, Imd. Eff. Aug. 3, 1998.

Popular name: Teachers' Tenure Act

38.105 Necessary reduction in personnel; first vacancy.

Sec. 5. For a period of 3 years after the effective date of the termination of the teacher's services, a teacher on continuing tenure whose services are terminated because of a necessary reduction in personnel shall be appointed to the first vacancy in the school district for which the teacher is certificated and qualified. However, for a teacher on continuing tenure in a school district whose services were terminated before the effective date of the amendatory act that added this sentence, the teacher's right under this section to be appointed to the first vacancy in the school district for which the teacher is certificated and qualified shall continue for a period of 3 years after the effective date of the amendatory act that added this sentence. This section does not prevent a school district from reemploying after the 3-year period specified in this section a teacher described in this section who was previously employed in that school district.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.105;—Am. 1993, Act 59, Imd. Eff. June 11, 1993.

Constitutionality: Neither the teacher tenure act nor due process requires a full evidentiary hearing by a school board before the board may remove from a recall list the name of a laid-off teacher who has abandoned the right to recall. *Tomiak v. Hamtramck School District*, 426 Mich. 678, 397 N.W.2d 770 (1986).

Popular name: Teachers' Tenure Act

ARTICLE V RESIGNATION AND LEAVE OF ABSENCE.

38.111 Resignation or leave of absence; notice required.

Sec. 1. No teacher on continuing tenure shall discontinue his services with any controlling board except by mutual consent, without giving a written notice to said controlling board at least 60 days before September first of the ensuing school year. Any teacher discontinuing his services in any other manner than as provided in this section shall forfeit his rights to continuing tenure previously acquired under this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.111.

Popular name: Teachers' Tenure Act

38.112 Leave of absence; physical or mental disability.

Sec. 2. Any controlling board upon written request of a teacher may grant leave of absence for a period not to exceed 1 year, subject to renewal at the will of the board: Provided, That without request, leave of absence because of physical or mental disability may be granted by any controlling board for a period not to exceed 1 year: Provided further, That any teacher so placed on leave of absence shall have the right to a hearing on such unrequested leave of absence in accordance with the provisions for a hearing in article 4, section 4 of this act: Provided, That no leave of absence shall serve to terminate continuing tenure previously acquired under this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.112.

Popular name: Teachers' Tenure Act

ARTICLE VI RIGHT TO APPEAL.

38.121 Appeal to state tenure commission; notice; hearing.

Sec. 1. A teacher who has achieved continuing tenure status may appeal to the tenure commission any decision of a controlling board under this act, other than a decision governed by article IV on discharge or demotion of a teacher on continuing tenure, within 20 days from the date of the decision. The tenure commission shall provide for a hearing on the appeal. Notice and conduct of the hearing shall be the same as provided in article IV and in rules promulgated by the tenure commission.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.121;—Am. 1963, Act 242, Eff. Sept. 6, 1963;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

Administrative rules: R 38.131 et seq. of the Michigan Administrative Code.

ARTICLE VII STATE TENURE COMMISSION.

38.131 State tenure commission; creation, membership; superintendent as ex-officio secretary; legal advisor.

Sec. 1. There is hereby created a state tenure commission of 5 members: 2 of whom shall be classroom instructors, 1 a member of a board of education of a graded or city school district, 1 a person not a member of a board of education or a teacher, and 1 a superintendent of schools. The superintendent of public instruction shall be ex officio secretary of the commission, and the attorney general shall assign to the commission an assistant who shall be legal advisor to the commission.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.131;—Am. 1963, Act 242, Eff. Sept. 6, 1963.

Popular name: Teachers' Tenure Act

38.132 Tenure commission; members, appointment, terms, vacancies.

Sec. 2. Within 30 days after the effective date of this act, the governor shall appoint the members of the tenure commission for the following terms: One for a term of 3 years, 1 for a term of 2 years and 1 for a term of 1 year. Each term shall begin on the first day of September. Immediately preceding the expiration of their respective terms the governor shall appoint succeeding members of the tenure commission for terms of 5 years. In the event of a vacancy on the tenure commission the governor shall immediately appoint a successor to complete the unexpired term.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.132.

Popular name: Teachers' Tenure Act

38.133 Tenure commission; geographical qualifications of members.

Sec. 3. Not more than 1 member of the tenure commission shall be appointed from any 1 school district.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.133.

Popular name: Teachers' Tenure Act

38.134 Tenure commission; qualifications of teacher member.

Sec. 4. Any teacher appointed to the tenure commission after September 1, 1938, must be on continuing tenure.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.134.

Popular name: Teachers' Tenure Act

38.135 Tenure commission; membership of teacher not to affect tenure.

Sec. 5. Membership on the state tenure commission shall not adversely affect the status of the teacher's tenure with a controlling board.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.135.

Popular name: Teachers' Tenure Act

38.136 Tenure commission; times and places of meetings; conducting business at public meeting; notice of meeting.

Sec. 6. (1) The tenure commission shall meet twice a year at stated times in the city of Lansing, and at other times and in other places as determined by the commission.

(2) The business which the commission may perform shall be conducted in compliance with Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.136;—Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977.

Popular name: Teachers' Tenure Act

38.137 Tenure commission; powers.

Sec. 7. The tenure commission is hereby vested with such powers as are necessary to carry out and enforce the provisions of this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.137.

Popular name: Teachers' Tenure Act

38.138 Tenure commission; compensation and expenses.

Sec. 8. The per diem compensation of the state tenure commission and the schedule for reimbursement of expenses shall be established annually by the legislature.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.138;—Am. 1965, Act 8, Imd. Eff. Apr. 8, 1965;—Am. 1975, Act 56, Imd. Eff. May 20, 1975.

Popular name: Teachers' Tenure Act

38.139 Tenure commission; board of review for cases appealed from decision of controlling board; location of records; availability of certain writings to public.

Sec. 9. (1) The tenure commission shall act as a board of review for all cases appealed from the decision of a controlling board. All records of the tenure commission shall be kept in the office of the superintendent of public instruction.

(2) A writing prepared, owned, used in the possession of, or retained by the commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.139;—Am. 1963, Act 242, Eff. Sept. 6, 1963;—Am. 1977, Act 252, Imd. Eff. Dec. 6, 1977;—Am. 1993, Act 60, Eff. Oct. 1, 1993.

Popular name: Teachers' Tenure Act

38.140 Tenure commission; organizational meeting, election of officers, rules and regulations.

Sec. 10. Within 30 days after the effective date of this act, the tenure commission shall hold a meeting in the city of Lansing for the purpose of organization and the election of a chairman and secretary, both of whom shall be members of the commission. The tenure commission shall draw up rules and regulations and shall

have the power to amend same and to provide for the conduct of its affairs in such manner as shall be consistent with the provisions of this act.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.140.

Popular name: Teachers' Tenure Act

Administrative rules: R 38.131 et seq. of the Michigan Administrative Code.

38.141 Repealed. 1965, Act 8, Imd. Eff. Apr. 8, 1965.

Compiler's note: The repealed section provided two-year appropriation for expenses of the tenure commission.

Popular name: Teachers' Tenure Act

ARTICLE VIII DISTRICTS.

38.151 Application of act.

Sec. 1. This act shall apply to all school districts of the state.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.151;—Am. 1964, Act 2, Eff. Aug. 28, 1964.

Popular name: Teachers' Tenure Act

38.152 Repealed. 1964, Act 2, Eff. Aug. 28, 1964.

Compiler's note: The repealed section provided that school district board shall notify the superintendent of public instruction of results of election.

Popular name: Teachers' Tenure Act

ARTICLE IX PENALTY.

38.161 Violation of act; penalty.

Sec. 1. Failure of any member of a controlling board to comply with any provisions of this act shall be deemed a violation of the law and shall subject said member to the same penalty as prescribed for a violation of the general school law.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.161.

Popular name: Teachers' Tenure Act

ARTICLE X INCONSISTENT ACTS.

38.172 Teachers; waiver of rights in contracts prohibited.

Sec. 2. No teacher may waive any rights and privileges under this act in any contract or agreement made with a controlling board. In the event that any section or sections of a contract or agreement entered into between a teacher and a controlling board make continuance of employment of such teacher contingent upon certain conditions which may be interpreted as contrary to the reasonable and just causes for dismissals, provided by this act, such section or sections of a contract or agreement shall be invalid and of no effect in relation to determination of continuance of employment of such teacher.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.172.

Popular name: Teachers' Tenure Act

ARTICLE XII

38.191 Effective date.

Sec. 1. This act shall take effect and be in force from and after September first, 1937.

History: 1937, Ex. Sess., Act 4, Eff. Sept. 1, 1937;—CL 1948, 38.191.

Popular name: Teachers' Tenure Act